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THE LAW SCHOOL. — Several changes in the courses and in the faculty are announced. Dean Ames will give both second and third year Equity, the latter extending only through the first half year. The course on Insurance, again under Professor Wambaugh, will be given two hours each week throughout the year. Professor Beale has been appointed to the new chair, the Carter Professorship of General Jurisprudence, endowed by the late Mr. James C. Carter, LL.B. 1853, and under it will give during the second half year a new course on Jurisprudence. Professor Brannan, who has been made Bussey Professor of Law, will conduct the course on Damages. Mr. L. F. Schaub, LL.B. 1906, will give Persons, and Mr. A. R. Campbell, LL.B. 1902, will again, as two years ago, conduct the extra course on New York Practice. Professor Warren and Professor Wyman have been appointed to full professorships.

THE FIDUCIARY CHARACTER OF A PROMOTER. — It is a rule of equity that an agent or trustee, acting for his beneficiary in a transaction in which he himself is personally interested, must exhibit a scrupulous degree of candor toward his principal in order to escape the imputation of fraud.[1] A similar duty is said to be owed by a promoter to the corporation which he launches forth. If he does not fully disclose his private interest in matters in which he causes the corporation to engage — for example, the sale of his own property to the corporation — he is liable to it for his secret profits,[2] or for its losses,[3] or the corporation may rescind the transaction.[4] He can-

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[1] Wardell *v.* Railroad Co., 103 U. S. 651.
[2] Yale Gas Stove Co. *v.* Wilcox, 64 Conn. 101.
[3] *Re* Leeds & Hanley Theatres, etc., [1902] 2 Ch. 809.
[4] Lindsay Petroleum Co. *v.* Hurd, L. R. 5 P. C. 221.

not avoid liability by purporting to make disclosure to the corporation and secure its assent through a board of directors composed of his friends and puppets;[5] for it is part of his duty as a fiduciary, when dealing with the corporation, to see that members whose interests may be adverse to his own are fairly and independently represented.[6] It may be, however, that no such persons are among the incorporators, or have subscribed to the stock, at the time when the transaction is approved by the dummy board. In that case, if an adverse interest is not expected ever to exist, as when all the stock is to be issued to the promoter and his friends with the understanding that it is not to be transferred, clearly at no time does the promoter bear a fiduciary relation, since the interest of all concerned is identical;[7] and hence the corporation cannot complain of dealings with a dummy board, even though adverse members subsequently come in.[8]

But as to the situation where a future adverse interest is contemplated and later exists,[9] the decisions are conflicting and the opinions misleading. Much attention is paid to representations in the prospectus,[10] and to the promoter's duty not to deceive future allottees,[11] matters obviously relevant only to the rights of the individual subscribers. But to afford the corporation a remedy, there must be found, contemporaneous with the transaction, a duty to the corporation and a breach thereof. These essentials appear to exist, it is believed, when the launching of a corporation is considered as one single undertaking, over which the promoter exercises peculiar control, and in the management of which, therefore, he is to be held to a high standard of integrity. If, as part of this single initial enterprise, an adverse interest, whether by transfer or by original allotment, to furnish either fixed or working capital of any amount, is contemplated, the promoter-vendor must provide for independent representation. Consequently, to consummate a doubtful transaction before the adverse interest is in at all is a breach of his duty to the corporation. If, on the other hand, the adverse interest though contemplated is not a part of the initial scheme, there is no present duty not to deal with a dummy board.[12] Such a line of division, it is true, has not been expressly adopted by any court; but it is submitted to be the most practicable in the light of principle and authority.

In applying the suggested test, the fact that all, some, or none of the stock had been issued at the time of the transaction with the dummy board, would be material only as indicating the nature of the initial scheme. However, no case has been found where the corporation was allowed to repudiate the assent of its shareholders, given when all the stock had been issued.[13] In fact, the United States Supreme Court has recently held that where forty shares out of a contemplated hundred and fifty thousand had been issued, the promoter could safely consummate an unfair contract with a dummy board, though immediately afterwards twenty thousand shares were issued to the public, as had been planned. *Old Dominion, etc., Co.* v. *Lewisohn*, 210 U. S. 206.

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[5] Yeiser *v.* U. S. Board, etc., Co., 107 Fed. 340. *Contra*, Densmore Oil Co. *v.* Densmore, 64 Pa. 43.

[6] New Sombrero Phosphate Co. *v.* Erlanger, 5 Ch. D. 73; affirmed 3 A. C. 1218.

[7] *Re* British Seamless Paper Box Co, 17 Ch. D. 467.

[8] Parsons *v.* Hayes, 14 Abb. N. C. 419.

[9] If adverse members are contemplated but never materialize, the corporation of course has no complaint. *Re* Ambrose Lake, etc., Co., 14 Ch. D. 390.

[10] Gluckstein *v.* Barnes, [1900] A. C. 240.

[11] *Re* Postage Stamp Automatic Delivery Co., [1892] 3 Ch. 566.

[12] Blum *v.* Whitney, 185 N. Y. 232.

[13] *Cf.* Foster *v.* Seymour, 23 Fed. 65.

The opinion was delivered by Mr. Justice Holmes, who several years ago, on the Massachusetts bench, concurred in a contrary result, in a case substantially similar except for the fact that there no stock had been issued at the time of the alleged assent.[14] Upon this narrow difference the present decision appears unnecessarily technical, and is opposed to the doctrine of three important jurisdictions,[15] in one of which the same facts were presented against a different defendant.[16] Moreover, to hold broadly that assent by any board at any time waives the fiduciary obligation, seems deplorably to cripple a beneficent and well-established rule.

LIABILITY FOR INTERFERING WITH TRADING STAMP CONTRACTS. — The giving of trading stamps by merchants to their customers as a premium upon cash purchases is one of the more recently developed methods of advertising. The merchant buys these stamps from an issuing company which contracts, among other things, to redeem in goods of various sorts all stamps regularly issued to customers when they are presented in lots of a certain number. The right of a holder of stamps regularly issued to redemption arises from the contract between the stamp company and the merchant, of which the stamp holder is a beneficiary; or by a fulfilling of the conditions of any sufficiently specific public offer to a unilateral contract which the stamp company may make. The trading stamp, therefore, like a railroad [1] or lottery [2] ticket, is a contractual obligation, a chose in action. At first the stamps were issued with no limitation upon their transferability, and the public accepted them as transferable obligations. As in the case of promissory notes and railroad tickets,[3] the courts took cognizance of this general understanding and assumed that the stamps were transferable.[4] Such stamps are therefore analogous to promissory or bank notes payable to bearer, and like them assignable, not by giving the assignee a right to sue in the name of the assignor, but by a true transference and extinguishment of the assignor's right. The ownership of an obligation is governed by the same rules of law as the ownership of a chattel, and any such stamp holder therefore should be free to transfer his property right by any legal means in his power. Most courts, however, have at the suit of the stamp company enjoined merchants who are not subscribers to the company's scheme from purchasing stamps from holders and giving them as premiums to their customers.[5] But if our analysis of the nature of the trad-

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[14] Hayward *v.* Leeson, 176 Mass. 310.

[15] Pietsch *v.* Milbrath, 123 Wis. 647; New Sombrero Phosphate Co. *v.* Erlanger, *supra;* Old Dominion, etc., Co. *v.* Bigelow, 188 Mass. 315. *Contra,* Tompkins *v.* Sperry, Jones & Co., 96 Md. 560.

[16] Old Dominion, etc., Co. *v.* Bigelow, *supra.*

[1] There is a lack of harmony among the cases, but the modern tendency is to hold that a railroad ticket is a contract. See 1 HARV. L. REV. 17.

[2] Homer *v.* Whitman, 15 Mass. 132; and see Shankland *v.* Corporation of Washington, 5 Pet. (U. S.) 390. Although the trading stamp is similar in its nature to the lottery ticket, the trading stamp scheme is unlike a lottery in that it involves no element of chance. Recent statutes forbidding the trading stamp business have therefore been universally declared unconstitutional by the courts. Madden *v.* Dycker, 72 N. Y. App. Div. 308; Winston *v.* Beeson, 135 N. C. 271.

[3] Sleeper *v.* R. R. Co., 100 Pa. St. 259.

[4] Sperry & Hutchinson Co. *v.* Hertzberg, 69 N. J. Eq. 264, 272.

[5] Sperry & Hutchinson Co. *v.* Mechanics' Clothing Co., 135 Fed. 833; Sperry & Hutchinson Co. *v.* Temple, 137 Fed. 992; S. & H. Co. *v.* Brady, 134 Fed. 691; S. & H. Co. *v.* Asch, 145 Fed. 659. *Contra,* S. & H. Co. *v.* Hertzberg, *supra,* and see S. & H. Co. *v.* Mechanics' Clothing Co., 128 Fed. 800; *ibid.* 1015